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AN ACT

RELATING TO THE DISPOSITION OF DEAD BODIES; REQUIRING
COUNTIES TO GIVE REASONABLE OPPORTUNITY FOR LEGAL NEXT OF KIN
TO TAKE POSSESSION OF AN UNCLAIMED DECEDENT; DEFINING "LEGAL
NEXT OF KIN"; ALLOWING FOR COUNTIES TO AUTHORIZE THE
DISPOSITION OF UNCLAIMED DEAD BODIES AND SET THE RATE THAT IS
PAID FOR BURIAL OR CREMATION; CHANGING THE AMOUNT OF TIME A
COUNTY SHALL RETAIN CREMATED REMAINS; REQUIRING THE ESTATE OF
AN UNCLAIMED DECEDENT TO REIMBURSE THE COUNTY FOR BURIAL OR
CREMATION EXPENSES; MAKING TECHNICAL CHANGES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. Section 24-12-1 NMSA 1978 (being Laws 1973,
Chapter 354, Section 1, as amended) is amended to read:

"24-12-1. NOTIFICATION OF LEGAL NEXT OF KIN OF
DECEDENT--AUTHORIZATION OF PERSON DESIGNATED ON RECORD OF
EMERGENCY DATA FORM TO DIRECT BURIAL--UNCLAIMED DECEDENTS.--

A. As used in this section:

(1) "due diligence" means the reasonable
steps taken to satisfy the legal requirement relating to the
disposition of dead bodies, including attempts to identify
the body and locate legal next of kin; and

(2) "legal next of kin" means the following
persons in the order listed:

(a) the surviving spouse;

1 (b) a majority of the surviving adult
2 children of the decedent;

3 (c) the surviving parents of the
4 decedent;

5 (d) a majority of the surviving
6 siblings of the decedent;

7 (e) the adult person of the next degree
8 of kinship in the order named by New Mexico law to inherit
9 the estate of the decedent; or

10 (f) an adult who has exhibited special
11 care and concern for the decedent and is aware of the
12 decedent's views and desires regarding the disposition of the
13 decedent's body and is willing and able to make a decision
14 about the disposition of the decedent's body.

15 B. State, county, municipal officials or other
16 person having charge or control of the body of a decedent
17 shall use due diligence to notify the legal next of kin or
18 other claimant of the decedent.

19 C. If the decedent died while serving in any
20 branch of the United States armed forces, the United States
21 reserve forces or the national guard, during any period of
22 duty when the secretary of the military service concerned can
23 provide for the recovery, care and disposition of remains,
24 and the decedent completed a United States department of
25 defense record of emergency data form or its successor form,

1 the authority to direct the burial of the decedent or to
2 provide other funeral and disposition arrangements for the
3 decedent devolves on the person designated by the decedent
4 pursuant to that form.

5 D. If no claimant is found who will assume the
6 cost of burial, the official having charge or control of the
7 decedent shall notify the county, stating, when possible, the
8 name, age, sex, legal next of kin and cause of death of the
9 deceased and any other information obtained that the county
10 could use to conduct due diligence. The county may perform
11 additional due diligence if reasonably determined necessary.

12 E. If reasonable opportunity has been afforded to
13 the legal next of kin and if no other claimant has been
14 found, the decedent may be deemed unclaimed and the legal
15 next of kin deemed to have waived the right to take
16 possession of the body. Unless the medical investigator
17 retains the body in accordance with Section 24-12-2 NMSA
18 1978, the county shall authorize disposition of the body. As
19 used in this subsection, "reasonable opportunity" means
20 fourteen days after the legal next of kin has been notified
21 at the legal next of kin's last known addresses.

22 F. The body shall be embalmed, if required, and
23 buried or cremated according to rules of the agency having
24 jurisdiction. After the exercise of due diligence required
25 in Subsection B of this section, the medical investigator

1 shall be provided material data demonstrating due diligence
2 and the fact that no claimant has been found. When the
3 medical investigator has determined that due diligence has
4 been exercised, that reasonable opportunity has been afforded
5 to legal next of kin to claim the body and that the body has
6 not been claimed, the medical investigator shall determine
7 that the remains are unclaimed. In no case shall an
8 unclaimed body be disposed of in less than two weeks from the
9 date of the discovery of the body."

10 SECTION 2. Section 24-12-2 NMSA 1978 (being Laws 1973,
11 Chapter 354, Section 2, as amended) is amended to read:

12 "24-12-2. AUTHORITY OF THE OFFICE OF THE STATE MEDICAL
13 INVESTIGATOR--DISPOSITION OF UNCLAIMED BODY--TRANSMISSION OF
14 RECORDS OF INSTITUTION.--

15 A. Upon the determination that a body is
16 unclaimed, the medical investigator shall retain the body for
17 use only for medical education or shall certify that the body
18 is unnecessary or unsuited for medical education and release
19 it to the state, county or municipal officials having charge
20 or control of the body for burial. The state, county,
21 municipal officials or other person having charge or control
22 of the body of a decedent shall have the body removed for
23 disposition within three weeks from the date on which the
24 medical investigator notified the appropriate entity.

25 B. If the unclaimed body is retained for use in

1 medical education, the facility or person receiving the body
2 for that use shall pay the costs of preservation and
3 transportation of the body and shall keep a permanent record
4 of bodies received.

5 C. If a decedent was an inmate of a public
6 institution, the institution shall transmit, upon request of
7 the medical investigator, a brief medical history of the
8 person for purposes of identification and permanent record.
9 The records shall be open to inspection by any state or
10 county official or district attorney."

11 SECTION 3. Section 24-12-3 NMSA 1978 (being Laws 1973,
12 Chapter 354, Section 3) is amended to read:

13 "24-12-3. PENALTIES.--

14 A. A person who conducts a post-mortem examination
15 on an unclaimed body without express permission of the
16 medical investigator is guilty of a misdemeanor and shall be
17 sentenced pursuant to the provisions of Section 31-19-1 NMSA
18 1978.

19 B. A person who unlawfully disposes of, uses or
20 sells an unclaimed body is guilty of a fourth degree felony
21 and shall be sentenced pursuant to the provisions of Section
22 31-18-15 NMSA 1978."

23 SECTION 4. Section 24-12-4 NMSA 1978 (being Laws 1973,
24 Chapter 354, Section 4, as amended) is amended to read:

25 "24-12-4. POST-MORTEM EXAMINATIONS AND

1 AUTOPSIES--CONSENT REQUIRED.--

2 A. An autopsy or post-mortem examination may be
3 performed on the body of a decedent by a physician or surgeon
4 whenever consent to the procedure has been given by:

5 (1) written authorization signed by the
6 decedent during the person's lifetime;

7 (2) authorization of a person or on behalf
8 of any person whom the decedent designated in writing during
9 the person's lifetime to take charge of the decedent's body
10 for burial or other purposes;

11 (3) authorization of the decedent's
12 surviving spouse;

13 (4) authorization of an adult child, parent
14 or adult brother or sister of the decedent if there is no
15 surviving spouse or if the surviving spouse is unavailable,
16 incompetent or has not claimed the body for burial after
17 notification of the death of the decedent;

18 (5) authorization of any other relative of
19 the decedent if none of the persons enumerated in Paragraph
20 (4) of this subsection is available or competent to give
21 authorization; or

22 (6) authorization of the public official,
23 agency or person having custody of the body for burial if
24 none of the persons enumerated in Paragraphs (2) through (5)
25 of this subsection is available or competent to give

1 authorization.

2 B. An autopsy or post-mortem examination shall not
3 be performed under authorization given pursuant to the
4 provisions of Paragraph (4) of Subsection A of this section
5 by any one of the persons enumerated if, before the procedure
6 is performed, any one of the other persons enumerated objects
7 in writing to the physician or surgeon by whom the procedure
8 is to be performed.

9 C. An autopsy or post-mortem examination may be
10 performed by a pathologist at the written direction of the
11 district attorney or the district attorney's authorized
12 representative in any case in which the district attorney is
13 conducting a criminal investigation.

14 D. An autopsy or post-mortem examination may be
15 performed by a pathologist at the direction of the state,
16 district or deputy medical investigator when the state,
17 district or deputy medical investigator suspects the death
18 was caused by a criminal act or omission or if the cause of
19 death is obscure.

20 E. For purposes of this section, "autopsy" means a
21 post-mortem dissection of a dead human body in order to
22 determine the cause, seat or nature of disease or injury and
23 includes the retention of tissues customarily removed during
24 the course of autopsy for evidentiary, identification,
25 diagnosis, scientific or therapeutic purposes."

1 SECTION 5. Section 24-12A-1 NMSA 1978 (being Laws 1993,
2 Chapter 200, Section 1) is amended to read:

3 "24-12A-1. RIGHT TO AUTHORIZE CREMATION--DEFINITIONS.--

4 A. An adult may authorize the adult's own
5 cremation and the lawful disposition of the cremated remains
6 by:

7 (1) stating the desire to be cremated in a
8 written statement that is signed by the adult and notarized
9 or witnessed by two persons; or

10 (2) including an express statement in the
11 will indicating that the testator desired that the remains be
12 cremated upon death.

13 B. A personal representative acting pursuant to a
14 will or the provisions of Chapter 45, Article 3 NMSA 1978 or
15 a funeral service establishment, a direct disposition
16 establishment or a crematory shall comply with a statement
17 made in conformance with the provisions of Subsection A of
18 this section. The statement is authorization to the personal
19 representative, funeral establishment, direct disposition
20 establishment or crematory that the remains of the decedent
21 are to be cremated. Statements dated prior to April 5, 1993
22 are to be given effect if they meet the requirements of
23 Subsection A of this section.

24 C. A personal representative, funeral service
25 establishment, direct disposition establishment or crematory

1 acting in reliance upon a document executed pursuant to the
2 provisions of this section, who has no actual notice of
3 revocation or contrary indication, is presumed to be acting
4 in good faith.

5 D. A funeral service establishment, direct
6 disposition establishment, crematory or employee of a funeral
7 establishment, direct disposition establishment or crematory
8 or other person that relies in good faith on a statement
9 written pursuant to this section shall not be subject to
10 liability for cremating the remains in accordance with the
11 express instructions of a decedent. The written document is
12 a complete defense to a cause of action by any person against
13 any other person acting in accordance with the instructions
14 of the decedent.

15 E. As used in this section:

16 (1) "cremate" means to reduce a dead human
17 body by direct flame to a residue that may include bone
18 fragments; and

19 (2) "direct disposition establishment" means
20 an office, premises or place of business that provides for
21 the disposition of a dead human body as quickly as possible,
22 without a funeral, graveside service, committal service or
23 memorial service, whether public or private, and without
24 embalming of the body unless embalming is required by the
25 place of disposition."

1 SECTION 6. Section 24-12A-2 NMSA 1978 (being Laws 1993,
2 Chapter 200, Section 2, as amended) is amended to read:

3 "24-12A-2. NO WRITTEN INSTRUCTIONS--PRIORITY OF OTHERS
4 TO DECIDE DISPOSITION.--

5 A. Except as provided in Subsection B of this
6 section, if a decedent has left no written instructions
7 regarding the disposition of the decedent's remains, the
8 following persons are legal next of kin, in the order listed,
9 and shall determine the means of disposition, not to be
10 limited to cremation, of the remains of the decedent:

11 (1) the surviving spouse;

12 (2) a majority of the surviving adult
13 children of the decedent;

14 (3) the surviving parents of the decedent;

15 (4) a majority of the surviving siblings of
16 the decedent;

17 (5) the adult person of the next degree of
18 kinship in the order named by New Mexico law to inherit the
19 estate of the decedent; or

20 (6) an adult who has exhibited special care
21 and concern for the decedent and is aware of the decedent's
22 views and desires regarding the disposition of the decedent's
23 body and who is willing and able to make a decision about the
24 disposition of the decedent's body.

25 B. If a decedent left no written instructions

1 regarding the disposition of the decedent's remains, died
2 while serving in any branch of the United States armed
3 forces, the United States reserve forces or the national
4 guard and completed a United States department of defense
5 record of emergency data form or its successor form, the
6 person authorized by the decedent to determine the means of
7 disposition on a United States department of defense record
8 of emergency data form shall determine the means of
9 disposition, not to be limited to cremation.

10 C. The state, county, municipality or other person
11 having charge or control of the body of a decedent shall
12 notify or attempt to notify the legal next of kin."

13 SECTION 7. Section 24-12A-3 NMSA 1978 (being Laws 1999,
14 Chapter 241, Section 3) is amended to read:

15 "24-12A-3. UNCLAIMED BODIES--CREMATION PERMITTED.--An
16 unclaimed body, the disposition of which is the
17 responsibility of the county pursuant to the provisions of
18 Chapter 24, Article 13 NMSA 1978, may be cremated upon the
19 order of the county official responsible for ensuring the
20 disposition of the body or upon the order of any other
21 government official authorized to order the cremation.
22 Absent a showing of bad faith or malicious intent, the
23 official ordering the cremation and the person or
24 establishment carrying out the cremation shall be immune from
25 liability related to the cremation."

1 **SECTION 8.** Section 24-13-1 NMSA 1978 (being Laws 1939,
2 Chapter 224, Section 1, as amended) is amended to read:

3 "24-13-1. BURIAL OR CREMATION OF UNCLAIMED
4 DECEDENTS.--For the purposes of Chapter 24, Article 13 NMSA
5 1978, a dead body that has not been claimed by a friend,
6 relative or other interested person assuming the
7 responsibility for and expense of disposition shall be
8 considered an unclaimed decedent. It is the duty of each
9 county in this state to authorize interment or cremation of
10 an unclaimed decedent. The county shall ensure that the body
11 is buried or cremated no later than thirty days after a
12 determination has been made that the body has not been
13 claimed, but no less than fourteen days after death or
14 discovery of the body. If the body is cremated, the county
15 shall ensure that the cremated remains are retained and
16 stored for at least two years, or one year for eligible
17 veterans who qualify for veteran burial benefits, in a manner
18 that allows for identification of the remains. After the
19 expiration of two years, or one year for eligible veterans
20 who qualify for veteran burial benefits, the cremated remains
21 may be disposed of; provided the county retains a record of
22 the place and manner of disposition for not less than five
23 years after disposition."

24 **SECTION 9.** Section 24-13-2 NMSA 1978 (being Laws 1939,
25 Chapter 224, Section 2, as amended) is amended to read:

1 "24-13-2. PERSONS DEEMED INDIGENT.--A decedent shall be
2 considered to be an indigent for purposes of Chapter 24,
3 Article 13 NMSA 1978 if the decedent's estate is insufficient
4 to cover the cost of burial or cremation or if the decedent's
5 body is unclaimed."

6 **SECTION 10.** Section 24-13-3 NMSA 1978 (being Laws 1939,
7 Chapter 224, Section 3, as amended) is amended to read:

8 "24-13-3. EXPENSES FOR BURIAL OR CREMATION.--If the
9 unclaimed decedent had known assets or property of sufficient
10 value to defray the expenses of cremation or burial, invoices
11 for the expenses shall be forwarded to the executor of the
12 estate of the decedent, and such person shall pay the
13 expenses out of the decedent's estate. To the extent that
14 the decedent is unclaimed and has no estate, the burial or
15 cremation expenses shall be borne by the county of residence
16 of the decedent. If the county of residence of the decedent
17 is not known, the burial or cremation expenses shall be borne
18 by the county in which the decedent was found. The burial or
19 cremation expenses may be paid by the county out of the
20 general fund or the health care assistance fund in the amount
21 of one thousand dollars (\$1,000) for the burial or cremation
22 of the unclaimed decedent."

23 **SECTION 11.** Section 24-13-4 NMSA 1978 (being Laws 1939,
24 Chapter 224, Section 4, as amended) is amended to read:

25 "24-13-4. BURIAL AFTER INVESTIGATION--COST OF OPENING

1 AND CLOSING GRAVE.--The county after proper investigation
2 shall cause an unclaimed decedent to be decently interred or
3 cremated. The cost to be paid by the county of opening and
4 closing a grave shall not exceed one thousand dollars
5 (\$1,000), which sum shall be in addition to the sums
6 enumerated in Section 24-13-3 NMSA 1978."

7 SECTION 12. Section 24-13-5 NMSA 1978 (being Laws 1939,
8 Chapter 224, Section 5, as amended) is amended to read:

9 "24-13-5. PAYMENT OF BURIAL OR CREMATION EXPENSES--
10 COMMISSIONERS' LIABILITY.--The board of county commissioners
11 of any county within this state may authorize payment for the
12 burial or cremation of an unclaimed decedent, as defined in
13 Section 24-13-1 NMSA 1978. All available assets of the
14 deceased may be used to reimburse the county for the cost of
15 burial or cremation. Should the county be required to pay
16 expenses for burial or cremation of an unclaimed decedent who
17 has left an estate, the estate shall reimburse the county for
18 those expenses. The county commissioners may be liable
19 officially to the county they represent in double the amount
20 they have paid toward the burial or cremation of a person
21 other than as authorized by this section."

22 SECTION 13. Section 24-13-6 NMSA 1978 (being Laws 1939,
23 Chapter 224, Section 6, as amended) is amended to read:

24 "24-13-6. MONEY FROM RELATIVES--DUTY OF FUNERAL
25 DIRECTOR.--Should a funeral director or other person allowed

1 by law to conduct the business of a funeral director accept
2 money from the relatives or friends of a decedent whom the
3 county has determined to be an unclaimed decedent, the
4 funeral director shall immediately notify the county of the
5 payment or offer for payment, and the county shall not pay
6 for the burial or cremation involved, or, if the county has
7 already paid for the burial or cremation, the funeral
8 director shall immediately refund the money paid to the
9 funeral director by the county for the burial or cremation."

10 SECTION 14. Section 24-13-7 NMSA 1978 (being Laws 1939,
11 Chapter 224, Section 7, as amended) is amended to read:

12 "24-13-7. FAILURE TO NOTIFY--FUNERAL DIRECTOR'S
13 LIABILITY.--If a funeral director or other person authorized
14 by law to conduct the business of a funeral director receives
15 or contracts to receive any money or thing of value from
16 relatives or friends of an unclaimed decedent whose burial or
17 cremation expenses are paid or to be paid by the county and
18 fails to notify the county of that fact, the funeral director
19 or other person authorized by law to conduct the business of
20 a funeral director shall be liable to the county in an amount
21 double the amount paid or to be paid by the county."

22 SECTION 15. EFFECTIVE DATE.--The effective date of the
23 provisions of this act is July 1, 2023. _____